

**BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION**

FILE NUMBER 13-721192

JAMES HALL  
(Hereinafter called "Employee")

FORSYTH COUNTY  
(Hereinafter called "Employer")

PMA COMPANIES  
(Hereinafter called "Servicing Agent").

**AGREEMENT OF FINAL SETTLEMENT AND RELEASE**

THIS AGREEMENT OF FINAL SETTLEMENT AND RELEASE, made and entered into this, the 13th day of December, 2013, by and between James Hall, hereinafter called the Employee, and Forsyth County, hereinafter called the Employer, and by and through PMA Companies, hereinafter called the Servicing Agent,

**WITNESSETH:**

WHEREAS, the parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act and, on the 26th day of March, 2013, the relationship of Employer-Employee having existed; and

WHEREAS, the Employee alleges that he suffered an injury by accident on the 26th day of March, 2013, arising out of and in the scope of his employment as a Deputy Sheriff, when he was participating in a rope climb event at a physical training competition and felt pulling and straining in both arms and shoulders; and

WHEREAS, the Employee and Employer did not enter into a Form 21, Form 60 or Form 63 agreement for the payment of compensation because the Employer and Servicing Agent deny that the Employee suffered an injury by accident or occupational

disease. However, the parties stipulate, for purpose of this agreement, that the Employee's average weekly wage is approximately \$778.91, yielding a compensation rate of approximately \$519.30. The Employer and Servicing Agent paid no medical or indemnity benefits in this denied claim; and

WHEREAS, the Employer filed a Form 61 denying the Employee's claim for compensation pursuant to N.C. Gen. Stat. § 97-18(c) and (d). The Employer and Servicing Agent set forth their reasons for denial of this claim, to wit, that the Employee did not suffer an injury by accident arising out of and in the course and scope of his employment; and

WHEREAS, the Employee, Employer, and Servicing Agent, in presenting this Agreement for approval, represent that they have made available to the Industrial Commission with the Agreement all material medical and rehabilitation reports known to exist and which are in their possession or in the possession of their attorneys. Accordingly, the Parties hereby stipulate and agree to waive any rights they may have to contest the approval of this Agreement based upon any failure to provide copies of medical or rehabilitation records to the Industrial Commission with this Agreement for approval; and

WHEREAS, the Employee is represented by Oxner, Thomas & Permar, Winston-Salem, North Carolina, Ivy Oakley appearing; and the Employer and Servicing Agent are represented by the Kestenbaum Law Firm, Durham, North Carolina, Jane Kestenbaum appearing; and

WHEREAS, the Employee, Employer, and Servicing Agent feel that it is in the best interests of the parties to have finality of litigation in these matters, and to that end desire to compromise and settle all matters in controversy among themselves, without the necessity of any hearing before the North Carolina Industrial Commission, subject to the approval of said Commission, as by law provided.

NOW, THEREFORE, in consideration of the things hereinabove received as having been done and the things hereinafter agreed to be done and the mutual agreements on the part of each of the parties, it is agreed as follows:

1. The Employer and Servicing Agent agree to pay or cause to be paid to Employee and without commutation, the lump sum of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act.

Anticipating an attorney's fee of 25%, the balance of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) as the balance of future compensation in payments pro-rated over the Employee's life expectancy of 32 years, based on the Employee's date of birth of according to the Mortuary Tables Codified in N.C. Gen.

Stat. §8-46. The Employee's life expectancy of 32 years equals 1,664 weeks and yields payments of \$4.50 per week.

2. Whereas it is not the intention of the parties to this Settlement Agreement to shift responsibility for future medical treatment that the Employee may need to Medicare at some future time. In considering these issues, the parties specifically considered the fact that the Employer and Servicing Agent strongly dispute that the claim is compensable, the Employee is unlikely to receive an award of Social Security Disability benefits as a result of his alleged accident on March 26, 2013, and the Employee is currently not Medicare eligible and has no reasonable expectation of becoming Medicare eligible related to the alleged injury/disease that is subject of this Agreement. Therefore, no Medicare Set Aside has been established.

3. The Employer and Servicing Agent agree to pay the expenses of the April 2, 2013 treatment at the Wake Forest Baptist Hospital Emergency Department and the April 4 and April 11, 2013 treatment at Wake Forest Baptist Urgent Care, not to exceed \$3,082.25. The Employer and Servicing Agent do not agree to pay any other bills for medical expenses in this denied and disputed claim and the Parties to this Agreement thereby request that the Industrial Commission waive Industrial Commission Rule 502 (2)(b). See, medical expense sheet attached. It is agreed by the parties that the positions of the respective parties to this agreement are reasonable as to the payment of medical benefits. The parties hereby acknowledge that the issue of the payment of medical expenses is a material element to the Employer and Servicing Agent entering into this Agreement.

4. The Employer and Servicing Agent agree to pay or cause to be paid the

costs of this proceeding before the North Carolina Industrial Commission.

5. The Employee agrees to accept the sums herein agreed to be paid to him or on his behalf, in full, final and complete settlement and satisfaction of any past, present and future claims, demands, suits, actions or rights of action of whatsoever nature and kind, including claims for death benefits and funeral or similar expenses, which the said Employee, his beneficiaries, heirs, administrators or assigns, now has or may hereinafter have or claim to have on account of said workers' compensation claim. It is the sense of the agreement that the said sums so agreed to be paid shall be accepted in full settlement and satisfaction of all claims arising out of said alleged workers' compensation claim, whether presently existing, or presently known, or whether hereinafter existing, appearing or otherwise, and whether by virtue of things now existing or by change of conditions hereinafter. However, it is further agreed that no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released. The Employee knowingly and intentionally waives any right he may hereafter have to claim any medical expenses, indemnity compensation, or death benefits for the injuries which are the subject of this agreement.

6. The parties to this agreement hereby waive any hearing before the North Carolina Industrial Commission, and in presenting this agreement for approval, they represent that they have made available to the Commission with said agreement all medical information presently in their possession concerning the Employee's physical condition.

7. The Employee in making this Release states that he was not influenced by any representations or statements regarding his condition or regarding any other

matters, made by any person, firm or corporation, or by any physician or surgeon acting for or on behalf of the Employer, and that the facts in connection with his employment and with his resulting injury are fully known, understood, and comprehended by the Employee. In making this Release the parties hereto understand that the Employee's condition as a result of his injury may be permanent, recurrent, and progressive, and in making this Release and Agreement it is understood that the sum of money herein paid and other agreements recited above are in full and final settlement of all claims of the Employee against the Employer and Servicing Agent as to claims under the North Carolina Workers' Compensation Act, including future medical expenses, change of condition and/or death benefits. The parties expressly waive the right, if any, to set aside this Settlement Agreement should the medical opinions made orally to the Employee by his health care providers, expressed in this Agreement, and/or in the medical records prove to be in error. Further, the parties agree that this Agreement may not be set aside on the grounds that further or additional medical information or records exist or could be acquired. The parties affirmatively represent to the Industrial Commission that they have each had the opportunity and ability to obtain the medical and other records necessary to appropriately evaluate this claim and to enter into this Settlement Agreement.

8. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission and to the provisions of the North Carolina Workers' Compensation Act, and the same shall be binding upon the parties to this agreement only if and when the same shall have been submitted to and approved by said Commission either by the endorsement of its approval hereon or by the issuance of its

award approving the same.

IN WITNESS WHEREOF, the parties hereto have set their hands and Employee has adopted as his seal the "Seal" appearing beside his signature, all as of the day and year first above written.

James Nathan Hall (Seal)

JAMES HALL, EMPLOYEE

STATE OF NORTH CAROLINA

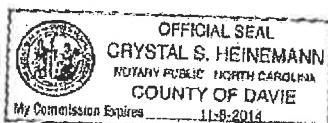
COUNTY OF Forsyth

I, Crystal S. Heinemann, a Notary Public in and for said County and State, do hereby certify that JAMES HALL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this, the 10<sup>th</sup> day of Jan, 2013.

Crystal S. Heinemann  
Notary Public

My Commission Expires: 11/8/14



FORSYTH COUNTY, Employer

By:

Jane Kestenbaum  
Attorney

PMA COMPANIES, Servicing Agent

By:

Debbie Oxner  
Attorney

By:

Jane Kestenbaum  
Jane Kestenbaum  
NC State Bar No. 16459  
Attorney for Employer  
Kestenbaum Law Firm  
P.O. Box 51939  
Durham, North Carolina 27717  
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jak@kestenbaumlaw.com

Consented to by:  
Oxner, Thomas + Permar, PLLC

By:

Ivy Oakley  
Ivy Oakley  
NC State Bar No. 43105  
Attorney for Employee  
301 N. Main Street, Suite 2443  
Winston Salem, NC 27101  
(336) 274-4494  
ioakley@otplaw.com

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Forsyth County ("the County") and James Hall ("Employee"), the parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement" or "General Release"), agree that the following sets forth their complete agreement and understanding regarding Employee's separation from employment with the County and all issues related to Employee's employment with the County.

1. The County and Employee acknowledge that Employee's employment with the County ceased on about May 1, 2013 when the Employee was terminated.
2. The County and Employee both wish to resolve any and all outstanding issues between them in order to provide certainty regarding the handling of any issues between them, related to either of them or involving both of them, in the future.
3. In consideration for the promises made by Employee in this Agreement, the County agrees to pay the Employee's portion of mediator fee, provide a neutral reference, AND OTHER VALUABLE CONSIDERATION, receipt of which is hereby acknowledged by Employee, and in connection with the Employee's pending Workers' Compensation claim, N.C.I.C. File Number 13-721192.
4. The consideration from the County set forth in Paragraph 3 above constitutes full settlement of any and all claims the Employee may have against the County, its successors, assigns, subsidiaries, affiliates, insurers or any of its officers, directors, shareholders, employees, agents, or representatives, for compensation or otherwise.
5. In consideration for the promises made by the County in Paragraph 3 above, the Employee, for himself, his agents, assignees, heirs, executors and administrators, fully releases the County, and its successors, assigns, subsidiaries, affiliates, branches, Insurers, officers, directors, shareholders, employees, agents and representatives, from any and all liability, costs, expenses and remedies of any type, by reason of any act or omission arising out of or in connection with the Employee's employment with or termination from employment by the County, including without limiting the generality of the forgoing, claims under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), the Civil Rights Act of 1966, as amended (42 U.S.C. § 1981), the Americans with Disabilities Act, as amended ("ADA"), the Family and Medical Leave Act, as amended ("FLMA"), the National Labor Relations Act, as amended ("NLRA"), the North Carolina Retaliatory Employment Discrimination Act, as amended ("REDA"), or any other federal, state, or local statute or regulation regarding employment, discrimination in employment, or the termination of employment, workers' compensation, occupational health and safety, or environmental protection, and/or federal or state common law related to employment contracts, wrongful discharge, or any other matter.

The Employee further covenants not to sue or bring any claim whatsoever in any forum against the County or any of the persons or entities released herein, and agrees to indemnify the County and such persons or entities released herein for all attorney's fees and costs which they incur should the Employee breach this covenant not to sue or bring claim.

6. In consideration for the promises made by the County in Paragraph 3 above, the Employee, for himself, his agents, assignees, heirs, executors and administrators, fully releases the County, and its successors, assigns, subsidiaries, affiliates, branches, insurers, officers, directors, shareholders, employees, vendors, agents and representatives, from any and all liability, costs, expenses and remedies of any type, for any and all claims the Employee may have against the County related to the accident which is the subject of his workers' compensation claim, Industrial Commission file number 13-721192, including, but not limited to, a claim or action asserted against the County's liability insurance.

7. In further consideration for the promises made by the County in Paragraph 3, above, Employee agrees to never apply for employment or otherwise seek to be hired, rehired, employed, reemployed or reinstated by the County in any paid or volunteer position, and waives any reinstatement or future employment with the County in any paid or volunteer position.

8. Employee understands and agrees that the existence and terms of this General Release and Agreement of Final Settlement and Release (Clincher) filed with the North Carolina Industrial Commission are confidential and shall not be disclosed to any third party without the written consent of the County, unless compelled to do so by legal process. Employee further agrees that if he breaks this promise, he will become immediately liable to the County for (1) the full amount given to him by the Company under Paragraph 3, above, and (2) any costs, including attorneys' fees, incurred by the Company in collecting that amount from Employee.

9. The existence and execution of this Agreement and General Release shall not be considered and shall not be admissible in any proceeding, as an admission by the County, or its agents or employees, of any liability, error, violation or omission.

10. This Agreement and General Release shall be binding upon and shall be for the benefit of the County, its successors, assigns, agents, representatives and employees and Employee, as well as his respective heirs, personal representatives, successors and assigns.

11. The provisions of this Agreement and General Release shall be severable, and the invalidity of any provision shall not affect the validity of the other provisions.

12. Employee acknowledges that the County advised him to consult with an attorney before executing this Agreement and that he was advised he has twenty-one (21) days to review this Agreement before signing it. To the extent the Employee signs this

Agreement in less than twenty-one (21) days, the Employee knowingly and voluntarily waives any right he may have in that regard. The Employee further acknowledges that he fully understands the terms of the Agreement, that he was not coerced into signing it, and that he signed it knowingly and voluntarily.

13. Employee acknowledges further that he understands he has seven (7) days after signing this Agreement within which he can revoke his acceptance of it and that this Agreement will not become effective until after the seven (7) day period for revocation has passed.

IN WITNESS WHEREOF, I have executed these presents, this, the 10<sup>th</sup> day of January, 2014.

James Hall (Seal)  
JAMES HALL

STATE OF NORTH CAROLINA  
COUNTY OF Forsyth

I, Crystal S. Heinemann, a Notary Public in and for said County and State, do hereby certify that JAMES HALL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this, the 10<sup>th</sup> day of January, 2014.

Crystal S. Heinemann  
Notary Public

My Commission Expires: 11/9/14

